



1129 20th Street | Suite 350 | Washington, DC 20036
202.872.0030 Phone | 202.872.1331 Fax
www.utc.org

February 20, 2013

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: Notice of Ex Parte Presentation -- Request by Progeny LMS, LLC for Waiver of Certain
Multilateration Location and Monitoring Service Rules (WT Docket No. 11-49)

Dear Ms. Dortch:

UTC is hereby filing the following written ex parte in the above-referenced proceeding.

During the recent Winter Committee Meetings of the National Association of Regulatory Utility Commissioners ("NARUC") held February 3-6, 2013 in Washington DC, the NARUC Telecommunications Committee hosted a panel entitled "*Spectrum Interference: The Achilles Heel for Smart Grids & Other Critical Infrastructure?*" The panel was moderated by Hon. Betty Ann Kane, Chairman, District of Columbia Public Service Commission. Panelists included Gary Parsons - Chief Executive Officer, NextNav & Progeny LMS; Mike Oldak - Vice President & General Counsel, Utilities Telecom Counsel; Laura Stefani - Counsel to Itron & to the Part 15 Coalition, Goldberg, Godles, Wiener & Wright; Stephen E. Coran - Counsel to the Wireless Internet Service Providers Association, Lerman Senter; and Sarah Morris - Policy Counsel, Open Technology Institute, New America Foundation.

The stated purpose of the panel was described in the NARUC agenda as follows:

"In 2011 and 2012, LightSquared was at the center of a firestorm of controversy over its plans to offer mobile wireless services that many people believed would create major and debilitating interference with the spectrum used by Global Positioning System (GPS) services. Now, many parties dispute Progeny LMS claims that its Multilateration Location and Monitoring Service (M-LMS) technology will not cause unacceptable interference with the spectrum used by unlicensed FCC Part 15 devices. Will the Part 15 devices, such as communications networks used for advanced metering infrastructure and smart grids, fixed wireless internet service providers, broadband services and electronic toll road, bridge and tunnel pass services, be significantly harmed by the Progeny LMS services? If yes, are there acceptable alternatives to reduce this instance of spectrum interference?"

One of the major issues discussed by all panelists was whether the field tests conducted by Progeny resolved the question of whether Progeny high power transmissions in the 902-928 MHz bands would interfere with all of the Part 15 low powered users, including the Advanced Metering Infrastructure (AMI) systems used to read meters and coordinate operations with consumers, but more importantly the Supervisory Control and Data Acquisition (SCADA) systems that actually operate to control utility system operations. While AMI systems are becoming increasingly important in integration of distributed energy resources into the distribution grid, the SCADA systems are a critical part of utility operations. Interference with utility SCADA networks, which often run with 10 millisecond latencies and use the 902-928 MHz bands, could undermine utility reliability. While much of the discussion focused on Itron's AMR systems, it was pointed out that the tests with Itron did not address SCADA communications since Itron does not manufacture SCADA systems.

These AMI and SCADA networks represent some of the tens of billions of dollars being invested to modernize electric utilities, but also are being deployed by gas and water utilities. While most of the panel discussion focused on the dispute between Itron, WISPA and Progeny over whether the tests revealed unacceptable levels of interference, Progeny claimed that they had been operating for three years in the service territory of Pacific Gas and Electric (PG&E). In response to UTC's question to Mr. Parsons, he indicated that Progeny never had a conversation with PG&E regarding whether the Progeny system may have impacted their operations. It also became apparent that the tests did not directly involve PG&E or any other utility, and focused on Itron's AMR systems rather than what UTC views as the more critical SCADA networks. In response to questions from the regulators, Mr. Parsons indicated that additional testing of SCADA systems could be conducted, and that the original testing took place during the summer with the results a few months later. Whereupon it was noted that additional testing might take 6 months to maybe a year.

Progeny's CEO, Mr. Parsons, and UTC (in its capacity as the trade association for electric, gas and water utilities, as well as other critical infrastructure industries) agreed to work together to identify utility test parties and what additional field tests would be necessary to ensure that Progeny's high powered transmissions in the 902-928 MHz bands would not *interfere and undermine utility grid modernization, as well as utility system operations that UTC believes could create significant problems for utilities*. *UTC is currently calling its members to identify such testing partners.*

Based on the panel discussion and questioning from the members of NARUC's Committee on Telecommunications, NARUC's Board of Directors adopted the attached resolution which provides (underlining added):

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2013 Winter Committee Meetings in Washington, D.C., requests the FCC to require further field tests of Progeny's M-LMS system equipment with AMI, smart grid systems, wireless broadband, and other critical infrastructure equipment

manufacturers and network operators conducted by independent and unaffiliated engineers mutually selected by Progeny and the Part 15 users; *and be it further*

RESOLVED, That NARUC requests the FCC to not authorize Progeny to operate its licensed M-LMS system in the 902-928 MHz band until the FCC can ensure that Progeny's M-LMS system will not cause unacceptable levels of interference to communications equipment and devices for AMI, smart grid systems, pipeline monitoring and control systems, wireless broadband networks and other critical infrastructure; *and be it further*

RESOLVED, That NARUC urges the FCC to forego a decision about whether to approve Progeny's petition for permanent authority to operate its M-LMS system in the 902-928 MHz band or other case-by-case petitions for waivers of the Part 90 M-LMS rules that could exacerbate interference problems until after it has adopted Part 90 rules that establish technical requirements, including an evaluation of whether to adopt stricter transmission power limits, for M-LMS licensees which will guard against unacceptable interference to Part 15 users in the 902-928 MHz band; *and be it further*

RESOLVED, That the FCC is urged to work with the States to establish consumer education and a process to report interruptions or loss of services.

UTC is in the process of reaching out to its utility members in order to arrange suitable utility partners for tests that will ensure that the Progeny high power transmissions will not interfere with critical utility operations.

Please do not hesitate to contact the undersigned if you have any questions

Respectfully,

A handwritten signature in cursive script, appearing to read "Brett Kilbourne".

Brett Kilbourne

cc: Renee Gregory
Julius Knapp
Paul Murray